



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: AUGUST 29, 2022

IN THE MATTER OF:

Appeal Board No. 623420

PRESENT: JUNE F. O'NEILL, MEMBER

In Appeal Board Nos. 623418, 623419 and 623420, the claimant appeals from the decisions of the Administrative Law Judge filed May 3, 2022, which sustained the initial determinations, holding the claimant ineligible to receive benefits, effective July 20, 2021, through March 14, 2022, on the basis that the claimant was not totally unemployed; charging the claimant with an overpayment of Pandemic Emergency Unemployment Compensation of \$3,521.00 recoverable pursuant to § 2107 (e)(2) of the Coronavirus Aid, Relief and

Economic Security (CARES) Act of 2020; charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation of \$2,100.00 recoverable pursuant to § 2104 (f)(2) of the Coronavirus Aid, Relief and

Economic Security (CARES) Act of 2020; reducing the claimant's right to receive future benefits by zero effective days; and charging a civil penalty of \$843.15 on the basis that the claimant made a willful misrepresentation to obtain benefits.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were appearances by the claimant and on behalf of the Commissioner of Labor.

Our review of the record reveals that the case should be remanded to hold a further hearing. The record was not sufficiently developed on the determination that the claimant was not totally unemployed, effective July 20, 2021, through March 14, 2022. The parties should have another opportunity to

submit additional testimony and other evidence on this issue.

At the further hearing, the claimant will testify regarding what specific activities including, but not limited to training classes, that the claimant was performing on behalf of his business between July 20, 2021, and September 2021, and between February 9, 2022, through March 14, 2022. In particular, the claimant will testify to the dates, times, location, and duration of the training necessary for his business. He will also offer testimony as to the dissolution of the corporation as of February 9, 2022; why the corporation was dissolved; and what was done between February and March 2022, to close his corporation. Finally, the claimant will also be questioned about the gaps in his weekly certifications between October 3, 2021, and January 23, 2022, and why he did not certify every week during that period. Any documentary evidence in support of all such testimony, including training schedules, enrollment confirmation, tuition payments, shall be produced at hearing for entrance into the record after an opportunity for objection.

The Judge shall take all additional testimony and evidence necessary to complete the hearing record.

Now, based on the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issues, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

JUNE F. O'NEILL, MEMBER

